

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Civil Action No. 2:10-cv-13101-BAF-RSW
and)	
)	Judge Bernard A. Friedman
NATURAL RESOURCES DEFENSE)	
COUNCIL, and SIERRA CLUB)	Magistrate Judge R. Steven Whalen
)	
Plaintiff-Intervenors)	
v.)	
)	
DTE ENERGY COMPANY, and)	
DETROIT EDISON COMPANY)	
)	
Defendants.)	
_____)	

**PLAINTIFF UNITED STATES' MOTION FOR STATUS CONFERENCE AND STAY
OF SUMMARY JUDGMENT BRIEFING**

Plaintiff United States hereby requests a status conference to discuss the orderly inclusion of potential additional claims into this case, as well as a timeline for future briefing in this case, should the Court deem any is appropriate. In support of this request, Plaintiff states:

1. The Sixth Circuit Court of Appeals recently reversed this Court's Order on Summary Judgment and remanded the case for further proceedings. ECF No. 164.
2. Heretofore, this case has focused on Clean Air Act (CAA) violations that occurred at Defendants' (DTE's) Monroe Unit 2 electric generating facility. *See, e.g.*, ECF Nos. 1, 8. However, as DTE is well aware, EPA has issued a Notice of Violation to DTE alleging similar violations at several of its other generating units. *See* Preliminary Injunction Hearing Transcript at 141–43 (Jan. 19, 2011) (excerpted at Ex. 1). While the United States agreed to

keep the focus on Monroe 2 for the purposes of accelerating trial and expediting relief,¹ with the return of the case to the district court, the United States is now considering amending its complaint to add claims of CAA violations at several other of DTE's facilities.

3. Additionally, DTE has recently sought leave to file another motion for summary judgment that professes to address the remaining issues in this case in light of the Sixth Circuit's decision, *see* ECF Nos. 165 & 166, but the Company never mentions the already-briefed and -pending motion that relates to precisely the issues it raises. *Compare, e.g.*, ECF No. 166 at 17 (asserting without legal argument that DTE followed EPA's projection regulations) *with* ECF Nos. 117, 127, & 155 (pending summary judgment briefing regarding, *inter alia*, the operation of EPA's emissions projection regulations).

4. In the interest of efficiency and judicial economy, the United States respectfully requests a status conference with the Court and the Parties to discuss whether—and to what extent—additional briefing on these issues is appropriate, and how that briefing should be timed with regard to the amendment of the complaint to incorporate additional claims.

5. Pursuant to Local Rule 7.1(a), counsel for the United States conferred with DTE's counsel to explain the nature of this Motion and its basis, and to request concurrence in the relief requested in this Motion; such concurrence was not obtained.

Respectfully Submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

Dated: May 24, 2013

s/ Elias L. Quinn
JAMES A. LOFTON
JUSTIN A. SAVAGE

¹ PI Hearing Transcript at 142 ll. 12–14 (Mr. Benson for the United States: “[F]or the expedited trial we’re talking about here, it would make sense to focus on Monroe 2”).

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2013, the foregoing motion and supporting materials were served via ECF on counsel of record.

s/ Elias L. Quinn

Counsel for the United States